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house and make complaint because of the small children in her care.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 626.]

Error to Circuit Court, Page County.

John Broaddus was convicted of an attempt to commit rape, and he brings error. Affirmed.

VIRGINIA HOT SPRINGS CO. v. LOWMAN.

Nov. 20, 1919.

[101 S. E. 326.]

1. Dedication (§ 58*)—Use of Toll Road for Other than Dedicated Purpose.—Where land was dedicated to a toll road company to provide a right of way to facilitate travel when the methods of travel in vogue were on foot, on horseback, or in vehicles drawn by animals, the fact that new methods of travel have been discovered and are in common use, for example, by automobile, does not create a new or different use from that for which the dedication was made.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 363.]

2. Easements (§ 51*)—Change of Use of Right of Way.—If a right of way depends solely upon the user, then the width of way and the extent of the user is measured by the character of the user, for the easement cannot be broader than the user, and a right of way acquired for one purpose cannot be used for another; but if the new use is in all respects of the same character and nature as the old, and the difference is in degree only, and no additional burden is put upon the servient estate, then the new use is within the prescriptive use.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 866.]

3. Dedication (§ 16 (1)*)—By Implication.—Dedication and acceptance of a public highway may be express or implied.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 353.]

4. Adverse Possession (§ 8 (2)*)—Land Dedicated for Toll Road Not Subject to.—Where a toll road was constructed under authority of statute, and the right to take tolls was granted to a private or semiprivate corporation, the road, when established, became a public road, and, when a dedication of the right of way was accepted, the rights of the public therein became fixed, and no title to any part thereof could be acquired by adverse possession.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 221.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Limitation of Actions (§ 11 (1)*)—Statute Does Not Run against State.—The statute of limitations does not run against the state, unless expressly mentioned.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 375.]

6. Dedication (§ 37*)—Acceptance of Dedication Evidenced by Construction of Pike and User.—Where landowners dedicated land to a toll road company, acceptance of the whole dedication was sufficiently evidenced by the construction of the pike on a part thereof, and subsequent use made of other parts.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 354.]

7. Dedication (§ 44*)—Dedication and Acceptance Shown.—In action to enjoin a toll road company from building a bridle path along the side of the turnpike, evidence held to show that the adjacent owners intended to dedicate all the land within fences erected for the purposes of the turnpike, and that it was accepted by the toll road company.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 357.]

8. Dedication (§ 37*)—Acceptance by User.—Implied dedication may be accepted by a long-continued use of a right of way by the public.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 355.]

9. Dedication (§ 34*)—Time for Acceptance.—A dedication of land to the public for a right of way need not be accepted at once; acceptance being sufficient, if made within a reasonable time, and before the withdrawal of the offer.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 355.]

10. Dedication (§ 37*)—Acceptance by User of Part of Right of Way.—Where acts of dedication of land to a toll road company show a continuing offer of dedication, it is not necessary that the acceptance should be evidenced by an immediate use and occupation of the whole of the land dedicated; but if a part of it is so used and occupied, with no indication of intention to refuse or abandon the residue, the use and occupation of such residue may be postponed until the public necessity or convenience requires its use.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 355.]

11. Easements (§ 10 (1)*)—Prescriptive Right to Maintain Slopes for Cuts and Fills.—Where it became necessary to make cuts and fills when a toll road was first constructed, and these had to have proper slopes to prevent caving and to furnish proper support for roadbed, the toll road company could acquire the right to such slopes by prescription.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 310.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

12. Dedication (§ 50*)—Right to Construct Bridle Path on Grade Different from Pike.—Where landowners dedicated land between fences to a toll road company, the company had the right to construct a bridle path anywhere within the way dedicated, and was not required to place it on the same grade with the turnpike, provided it imposed no additional burden on the property of the adjacent owners.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 361.]

13. Dedication (§ 58*)—Bridle Path Not Different Use than That for Which Land Was Dedicated.—Where a strip of land was dedicated by landowners to a toll road company to provide a right of way for a turnpike to facilitate travel, automobiles having come into use, a bridle path along the side of the turnpike was not a new and different use of the land dedicated, but was in aid of the original use, making the driveway safer for all classes of travelers, and its construction could not be enjoined by the landowners, unless it created a greater burden on the adjacent lands.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 361.]

14. Eminent Domain (§ 101 (1)*)—Adjacent Proprietors Entitled to Compensation for Change of Grade.—Where the landowners dedicated land to a toll road company, and, after automobiles came into use, the toll road company constructed a bridle path on the strip dedicated on a different grade than that of the turnpike, the adjacent proprietors, if damaged by reason of the change in the grade of the bridle path, were entitled to compensation, under Const. 1902, § 58.

[Ed. Note.—For other cases see 5 Va.-W. Va. Enc. Dig. 90.]

15. Constitutional Law (§ 32*)—Provision Requiring Compensation for Property Taken Self-Executing.—Const. 1902, § 58, providing that private property shall not be taken or damaged for public use without just compensation, is self-executing.

[Ed. Note.—For other cases see 3 Va.-W. Va. Enc. Dig. 225.]

16. Eminent Domain (§ 275 (2)*)—Change of Grade by Toll Road Company.—Where toll road company, to which land was dedicated for a turnpike, after automobiles had come into use, attempted to construct a bridle path on the strip dedicated on a different grade from that of the turnpike, the adjoining proprietors are not entitled to enjoin the construction of the bridle path, in the absence of any peculiar circumstance, since just compensation may be readily had.

[Ed. Note.—For other cases see 5 Va.-W. Va. Enc. Dig. 117.]

17. Eminent Domain (§ 70*)—Constitutional Provisions for Compensation.—Const. 1902, § 58, did not take away from a turnpike

*For other cases see same topic and KEY-NUMBER in all Key Numbered Digests and Indexes.

company the right to change the grade of the pike, but only provides that a just compensation shall be made for the damages resulting therefrom.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 88.]

18. Eminent Domain (§ 275 (2)*)—Injunction; Insignificant Damages.—Where a toll road company, in constructing a bridle path on a strip dedicated to it by landowners, cuts its land down in some places in such a manner as to remove the support for the adjacent land and of fences lawfully erected thereon, the landowner is not entitled to enjoin the construction of the bridle path where the damage is insignificant and can be readily compensated in damages.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 117.]

19. Eminent Domain (§ 274 (1)*)—Restraining Taking Private Property for Public Use.—Usually injunction is the proper remedy to prevent the taking of private property for a public use by one who is invested with the power of eminent domain.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 117.]

20. Eminent Domain (§ 275 (2)*)—Restraining Change of Grade by a Toll Road Company.—Where a toll road company, to which land was dedicated for a turnpike, went beyond the purpose of the dedication and attempted to construct a bridle path along said turnpike, within the strip dedicated, but on a different grade so as to damage adjacent proprietors, its construction will not be enjoined; the proposed change standing on no higher footing than trespass, for which an action at law may be maintained.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 117.]

Appeal from Circuit Court, Bath County.

Suit by Jos. F. Lowman against the Virginia Hot Springs Company. Decree for plaintiff, and defendant appeals. Reversed, and bill dismissed.

Allen & Walsh, of Charlottesville, and *J. T. McAllister*, of Hot Springs, for plaintiff in error.

J. M. Perry, of Staunton, and *J. W. Stephenson & Son*, of Warm Springs, for defendant in error.

LAVENSTEIN BROS. *v.* HARTFORD FIRE INS. CO.

June 12, 1919.

[101 S. E. 331.]

1. Insurance (§ 665 (1)*)—Fire Insurance—Inventory—Sufficiency of Evidence.—In action on fire policy insuring stock of goods, evi-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.